

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL J. NIEMEYER,
KENT A. FRANKLIN, ROBIN K. NASON,
SUSAN E. SHAWVER, PAUL W. ESTEY,
and LARRY N. BARNETT

MAILED
MAR 17 2006
U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2006-0827
Application 10/025,214

ON BRIEF

Before KIMLIN, WALTZ, and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the rejection of claims 1-6, 8-25, 27-40 and 42-48. Claim 1 is illustrative:

1. An absorbent structure, comprising:
an absorbent core; and

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an absorbent wrap including at least 5% binder material mixed throughout a fibrous absorbent such that the absorbent fibers are stabilized by the binder material, the absorbent wrap fully surrounding the absorbent core and overlapping at least a portion of the absorbent wrap, the absorbent wrap providing at least 20% of a total absorbent capacity of the absorbent structure.

The examiner relies upon the following references as evidence of obviousness:

Putzier	5,262,218	Nov. 16, 1993
Rosch ¹	6,009,558	Jan. 4, 2000
Celanese (GB '648)	1,231,648	May 12, 1971
Everett et al. (Everett)	WO 99/17695	Apr. 15, 1999

Appellants' claimed invention is directed to an absorbent structure comprising an absorbent core and an absorbent wrap which fully surrounds the core and overlaps at least a portion of the wrap. The wrap includes at least 5% binder material and provides at least 20% of the total absorbent capacity of the structure.

Appealed claims 1, 3-6, 8, 10, 11, 16, 19-21, 23-25, 27, 29 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Putzier in view of GB '648. Claims 1-6, 8-14, 16-25 and 27-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Everett in view of GB '648. Also, claims 15, 43 and 35-48 stand

¹ Rosch is not listed in the Examiner's Answer under the heading "Evidence Relied Upon," but appears in the statement of a rejection, as recognized by appellants.

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rejected under 35 U.S.C. § 103(a) as being unpatentable over Everett in view of GB '648 and Rosch.

Appellants have provided separate arguments only for claims 1 and 16 on appeal. Accordingly, all the appealed claims stand or fall together with claims 1 and 16.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of Section 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer, which we incorporate herein, and we add the following for emphasis only.

We consider first the rejection over Putzier in view of GB '648. There is no dispute that Putzier, like appellants, discloses an absorbent structure comprising an absorbent core and an absorbent wrap which surrounds the core and overlaps a portion of itself. Appellants also concur that Putzier expressly teaches a binder which stabilizes the wrapper. It is appellants' contention, however, that Putzier does not disclose that the binder is mixed throughout the fibrous absorbent material of the wrap. According to appellants, "the binder [of Putzier] is not described as an integral element of the wrapper, but instead is listed as an independent element" (page

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4, principal brief, first paragraph). Appellants also submit that the wrapper of Putzier has all the binder material concentrated along its seam.

We are not persuaded by appellants' argument. Rather, we agree with the examiner that Putzier's disclosure of "a binder stabilizing the wrapper" (column 2, line 48) provides a teaching, or at least a suggestion, to one of ordinary skill in the art that the binder is mixed throughout the wrapper. Also, the examiner accurately points out that "there is nothing in the entire disclosure of Putzier to support the contention that the binder is only applied at the seam ... Putzier repeatedly states that the binder stabilizes the wrapper, not the seam where the wrapper is overlapped on itself" (paragraph bridging pages 6 and 7 of answer). Moreover, we find that it has been conventional in the art to stabilize a fibrous structure by incorporating a binder throughout, as evidenced by GB '648.

Appellants also maintain that Putzier does not teach or suggest that the absorbent wrap provides at least 20% of the total absorbent capacity of the structure, as presently claimed. Appellants contend that "the wrapper disclosed in Putzier constitutes, at most, 8% wt. Of the absorbent structure" (page 5 of principal brief, penultimate paragraph). However, the portion of Putzier cited by appellants specifically states that "[e]specially preferred are non-woven

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substances of cotton-type materials which, for example, account for 5 to 8 wt. %, preferably 6 to 7 wt. %, of the entire material" (column 4, lines 65-68, emphasizes added). Hence, Putzier simply teaches that an especially preferred embodiment for the wrapper is a cotton-type material containing the recited amount of binder. It is well-settled that a reference disclosure must be considered for all that it fairly teaches, not just its preferred embodiments. Accordingly, we agree with the examiner that one of ordinary skill in the art would have found it obvious to balance the various parameters of strength, absorbency, etc., in determining the optimum amount of binder in the wrapper. It has generally been held that where patentability is predicated upon a change in the condition of a prior art composition, such as a change in concentration or the like, the burden is on the applicant to establish with objective evidence that the change is critical, i.e., it leads to a new, unexpected result. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990); In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In the present case, appellants have proffered no evidence that the claimed amount of absorbency in the wrapper produces any unexpected result.

Regarding the rejection under Section 103 over Everett in view of GB '648, we agree with the examiner that GB '648 establishes the obviousness of incorporating non-irritating binders into the wrapper

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of Everett in order to enhance its strength. The fact that Everett does not utilize a binder in its wrapper does not, in our view, militate against the obviousness of doing so in view of the state of the prior art. While appellants maintain that the purpose of Everett's wrap is to confine the absorbent material in the core, the examiner points out that "Everett itself clearly states that the wrapper itself is to be made of an absorbent material [and] Everett employs materials which are the same as the materials employed in the instant application, including cellulosic webs" (page 10 of answer, first paragraph). As for the claimed wrap providing at least 20% of the total absorbent capacity of the structure, we refer to pages 10 and 11 of the examiner's answer. Also, in the absence of unexpected results, we find that it would have been obvious for one of ordinary skill in the art to distribute the absorbency of the structure in accordance with its particular use. Again, appellants cite no evidence of unexpected results.

As for the rejection of claims 15, 34 and 35-48 over Everett in view of GB '648 and Rosch, appellants essentially rely upon the same argument that "there is no suggestion or motivation to apply the binder material of GB '648 to the wrapper material in Everett et

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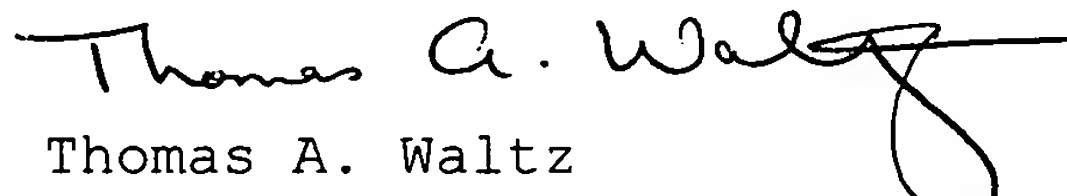
al." (Page 10 of principal brief, penultimate paragraph). For the reasons set forth above, we do not subscribe to appellants' position.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.36(a)(iv) (effective Sept. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sept, 7, 2004)).

AFFIRMED


Edward C. Kimlin)
Administrative Patent Judge)
)


Thomas A. Waltz)
Administrative Patent Judge)
)

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Jeffrey T. Smith)
Administrative Patent Judge)
)

ECK/cam

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Pauley, Petersen & Erickson
2800 West Higgins Road
Suite 365
Hoffman Estates, IL 60195